EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2007-1311-PWS-E **TCEQ ID:** RN101209740 **CASE NO.:** 34427

RESPONDENT NAME: Texas Department of Transportation

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|---|--|---|--|--|
| ORDER TYPE: | | | | |
| X 1660 AGREED ORDER | FINDINGS AGREED ORDER | FINDINGS ORDER FOLLOWING SOAH HEARING | | |
| FINDINGS DEFAULT ORDER | _SHUTDOWN ORDERIMMINENT AND SUBSTANT ENDANGERMENT ORDER | | | |
| _AMENDED ORDEREMERGENCY ORDER | | | | |
| CASE TYPE: | | | | |
| AIR | MULTI-MEDIA (check all that apply) | INDUSTRIAL AND HAZARDOUS WASTE | | |
| X PUBLIC WATER SUPPLY | PETROLEUM STORAGE TANKS | OCCUPATIONAL CERTIFICATION | | |
| WATER QUALITY | SEWAGE SLUDGE | UNDERGROUND INJECTION CONTROL | | |
| MUNICIPAL SOLID WASTE | RADIOACTIVE WASTE | DRY CLEANER REGISTRATION | | |
| TYPE OF OPERATION: Public water sup | |), Interstate 27, Plainview, Hale County | | |
| SMALL BUSINESS: Yes X N | | | | |
| OTHER SIGNIFICANT MATTERS: The facility location. | re are no complaints. There is no record of addition. | al pending enforcement actions regarding this | | |
| INTERESTED PARTIES: No one other th | an the ED and the Respondent has expressed an inte | rest in this matter. | | |
| COMMENTS RECEIVED: The Texas Register comment period expired on January 28, 2008. No comments were received. | | | | |
| Bryan Sinclair, Enforcement Divis Respondent: Mr. Randy Wood, R Mr. Steven E. Simmons, P.E., Dep 79073 | MS IV, Texas Department of Transportation, P.O. Bouty Executive Director, Texas Department of Transp | nent Team 2, MC 169, (512) 239-5717; Mr. | | |
| COMMENTS RECEIVED: The Texas Reg CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinated TCEQ Enforcement Coordinated Bryan Sinclair, Enforcement Divis Respondent: Mr. Randy Wood, R. Mr. Steven E. Simmons, P.E., Dep 79073 | prister comment period expired on January 28, 2008. Or: Ms. Melissa Keller, SEP Coordinator, Enforcement Mr. Tel Croston, Enforcement Division, Enforcement, MC 219, (512) 239-2171 MS IV, Texas Department of Transportation, P.O. Bernstein, 1980. | No comments were received. ent Division, MC 219, (512) 239-1768 tent Team 2, MC 169, (512) 239-5717; Mox 148, Plainview, Texas 79073 | | |

RESPONDENT NAME: Texas Department of Transportation **DOCKET NO.:** 2007-1311-PWS-E

VIOLATION SUMMARY CHART: CORRECTIVE ACTIONS VIOLATION INFORMATION PENALTY CONSIDERATIONS TAKEN/REQUIRED ... er bodelski i skript i godilerni C. BERT BEGING BUILD FOR SHIP SO FOR Type of Investigation: Total Assessed: \$1,450 **Ordering Provisions:** Complaint Routine Total Deferred: \$290 1) The Order will require the Respondent Enforcement Follow-up X Expedited Settlement to implement and complete a X Records Review Supplemental Environmental Project Financial Inability to Pay (SEP). (See SEP Attachment A) Date(s) of Complaints Relating to this Case: None SEP Conditional Offset: \$1,160 2) The Order will also require the Respondent to: Date of Investigation Relating to this Total Paid to General Revenue: \$0 Case: July 7, 2007 a. Immediately upon the effective date of **Site Compliance History Classification** this Agreed Order, begin maintaining a Date of NOV/NOE Relating to this Case: High __Average Poor minimum disinfection residual of 0.2 mg/L July 7, 2007 (NOE) free chlorine throughout the distribution Person Compliance History Classification system at all times; Background Facts: This was a routine __ High ___ Average __ Poor records review. b. Within 30 days after the effective date Major Source: ___ Yes ___ No of this Agreed Order, begin maintaining WATER water system records that can be made Applicable Penalty Policy: September 2002 available for review by Commission 1) Failed to maintain a minimum personnel at the time of an investigation; disinfectant residual of 0.2 milligrams per liter ("mg/L") free chlorine throughout the distribution system at all times. c. Within 45 days after the effective date of Specifically, on February 20, 21, and 23, this Agreed Order, submit written 2007, the free chlorine residual was certification and include detailed measured to be 0.0 mg/L when samples supporting documentation including were taken at various locations within the photographs, receipts, and/or other records Facility [30 Tex. ADMIN. CODE § to demonstrate compliance with Ordering 290.46(d)(2) and Tex. Health & Safety Provision Nos. 2.a. and 2.b. CODE § 341.0315(c)]. 2) Failed to provide water system records to Commission personnel at the time of the investigation [30 Tex. ADMIN. CODE § 290.46(f)(2)].

Additional ID No(s).: PWS ID No. 0950066

Attachment A Docket Number: 2007-1311-PWS-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:

Texas Department of Transportation

Payable Penalty Amount:

One Thousand One Hundred Sixty Dollars (\$1,160)

SEP Amount:

One Thousand One Hundred Sixty Dollars (\$1,160)

Type of SEP:

Pre-approved

Third-Party Recipient:

Texas Association of Resource Conservation and Development

Areas, Inc. ("RC&D")- Wastewater Treatment Assistance

Location of SEP:

Hale County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to provide low income rural homeowners with assistance to enable the repair or replacement of their failing on-site wastewater systems. SEP monies will be used to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from failing treatment systems

C. <u>Minimum Expenditure</u>

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

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2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc. 1716 Briarcrest Drive Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division Attention: SEP Coordinator, MC 219 Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality Financial Administration Division, Revenues Attention: Cashier, MC 214 P.O. Box 13088 Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

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Texas Department of Transportation Agreed Order – Attachment A

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

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| Policy Revision 2 (Septe | Penalty Calculation | n Worksheet (P | • | evision June 26, 2007 |
|-------------------------------------|---|---|---------------------------------------|--|
| TCFO | | | | |
| DATES Assigned PCW | 16-Jul-2007 14-Aug-2007 Screening 13-Aug-2007 | EPA Due | | |
| RESPONDENT/FACILITY | INFORMATION | Table 10 - 10 - 10 - 10 - 10 - 10 - 10 - 10 | | 1 |
| | Texas Department of Transportation | | | |
| Reg. Ent. Ref. No. | | | | |
| Facility/Site Region | 2-Lubbock | Major/Minor Source | Minor | |
| | | ······································ | · · · · · · · · · · · · · · · · · · · | |
| CASE INFORMATION | 24407 | No of Violations | 0 | |
| Enf./Case ID No. | 34427 2007-1311-PWS-E | No. of Violations Order Type | | |
| Media Program(s) | | Enf. Coordinator | | |
| Multi-Media | dono trator cappi, | | EnforcementTeam | 2 |
| Admin. Penalty \$ L | imit Minimum \$50 Maximum | \$1,000 | 1 | |
| i | | | | |
| | Penalty Calcula | tion Section | | , and a second |
| TOTAL DACE DENAL | • | | Subtotal 1 | \$850 |
| TOTAL BASE PENAL | TY (Sum of violation base penaltie | :5) | Suptotal 1 | \$630 |
| ADJUSTMENTS (+/-) | TO SUBTOTAL 1 | | | |
| | ed by multiplying the Total Base Penalty (Subtotal 1) by | the indicated percentage. | | 1 |
| Compliance Histo | ory 0% | Enhancement Subt | otals 2, 3, & 7 🔃 | \$0 |
| | | | | To the state of th |
| Notes | No penalty adjustment based on c | ompliance history. | | 1 |
| | | | J | |
| Culpability | No 0% | Enhancement | Subtotal 4 | \$0 |
| | <u> </u> | | | |
| Notes | The Respondent does not meet the | e culpability criteria. | | |
| | | | | |
| Good Faith Effort | to Comply 0% | Reduction | Subtotal 5 | \$0 |
| | Before NOV NOV to EDPRP/Settlement Offer | | | |
| Extraordinary | | | | |
| Ordinary | | | | |
| N/A | X (mark with x) | | ٦ | |
| Notes | The Respondent does not meet the | e good faith criteria. | | a periodical desirability and the second sec |
| | - | | . | Q. |
| | 0% | Enhancement* | Subtotal 6 | \$0 |
| | | at the Total EB \$ Amount | | |
| Approx. (| Cost of Compliance \$1,100 | | | |
| OUR OF OURTOTAL | 2.4.7 | | C: C K | \$850 |
| SUM OF SUBTOTALS | 5 1-7 | • | Final Subtotal | \$630 |
| OTHER EACTORS AS | NUCTICE MAY DECLUDE | 71% | Adjustment | \$600 |
| | S JUSTICE MAY REQUIRE ubtotal by the indicated percentage. (Enter number only | | Aujustinent | ΨΟΟΟ |
| Treations of crimarioes the Final C | | | | 4 |
| Notes | Enhancement recommended for recov | ery of avoided costs of | | and the second |
| | compliance. | | | |
| | | Final Pe | nalty Amount | \$1,450 |
| | | | | |
| STATUTORY LIMIT A | DJUSTMENT | Final Ass | essed Penalty | \$1,450 |
| | | | | |
| DEFERRAL | | 20% Reduction | Adjustment | -\$290 |
| Reduces the Final Assessed Pen | alty by the indicted percentage. (Enter number only; e.s | g. 20 for 20% reduction.) | ٦ | |
| N1_4 | Deferral offered for expedite | nd sattlement | | |
| Notes | Deferral offered for expedite | a somement. | | |
| | | - | _ | |
| PAYABLE PENALTY | | | | \$1,160 |
| | | | | |

Docket No.; 2007-1311-PWS-E Screening Date 13-Aug-2007 PCW Respondent Texas Department of Transportation Policy Revision 2 (September 2002) Case ID No. 34427 PCW Revision June 26, 2007 Reg. Ent. Reference No. RN101209740 Media [Statute] Public Water Supply Enf. Coordinator Thomas Barnett **Compliance History Worksheet** Compliance History Site Enhancement (Subtotal 2) Component Number of... Adjust. Enter Number Here Written NOVs with same or similar violations as those in the current enforcement action 0 0% NOVs (number of NOVs meeting criteria) Other written NOVs 0 0% Any agreed final enforcement orders containing a denial of liability (number of orders Ò 0% meeting criteria) Orders Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory 0% 0 emergency orders issued by the commission, Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting 0 0% Judgments criteria) and Consent Any adjudicated final court judgments and default judgments, or non-adjudicated final court Decrees judgments or consent decrees without a denial of liability, of this state or the federal ALCOHOLD IN 0% Any criminal convictions of this state or the federal government (number of counts) 0% Convictions 0 Chronic excessive emissions events (number of events) 0 0% Emissions Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of 0 0% audits for which notices were submitted) Audits Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege 'n 0% Act, 74th Legislature, 1995 (number of audits for which violations were disclosed) Please Enter Yes or No Environmental management systems in place for one year or more 0% No Voluntary on-site compliance assessments conducted by the executive director under a No 0% special assistance program Other Participation in a voluntary pollution reduction program No 0% Early compliance with, or offer of a product that meets future state or federal government No 0% environmental requirements 0% Adjustment Percentage (Subtotal 2) Repeat Violator (Subtofal 3) LIFE THE PROPERTY OF THE PROPE N/A Adjustment Percentage (Subtotal 3) 0% Compliance History Person Classification (Subtotal 7) >> Average Performer 0% Adjustment Percentage (Subtotal 7) >> Compliance History Summary BEER COLLEGE TO BE TO THE STREET OF THE STRE

No penalty adjustment based on compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7)

Compliance

History Notes

| PCW | o. 2007-1311-PWS-E | DOCKE | | 13-Aug-2007 | erining Date | 2010 |
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| licy Revision 2 (September 2002) | Policy F | ortation | tment of Trans | | | |
| PCW Revision June 26, 2007 | F | | | | Case ID No. | |
| | | | 0 | RN10120974 | ference No. | Reg. Ent. Refe |
| | | | Supply | Public Water | ia [Statute] | Medi |
| | | | nett | Thomas Bari | Coordinator | Enf. C |
| | | | | 1 | ation Number | Viola |
| c) | ealth & Safety Code § 341.0315(c) | 90.46(d)(2) and Tex | lmin. Code § 2 | 30 Tex. A | Rule Cite(s) | |
| I 23, | east 0.2 milligrams per liter ("mg/L") ecifically, on February 20, 21, and 23 o be 0.0 mg/L when samples were thin the Facility. | ystem at all times. | ne distribution s free chlorine re | throughout tl | n Description | Violation |
| salty \$1,000 | Base Penalty | | | | ι | |
| | | i x | Health Mat | nd Humar | l Property a | Environmental |
| | | Manager Co. | Harm | | ing i Abailin | Livinomia |
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| Reg. Ent. Reference No. RN101289740 Media [Statute] Public Water Supply Enf. Coordinator Thomas Bernett Violation Number 2 Rule Cite(s) Violation Description Failed to provide water system records to Commission personnel at the time of the investigation. Specifically, water system personnel were unaware of the requirements regarding records management and referention for public water supplies and failed to provide any records to Commission personnel at the time of the investigation. Base Penalty \$1,000 **Senvironmental, Property and Human Health Matrix Harm Rolease Major Moderate Ninor OR Actual Potential Percent 0% **Programmatic Matrix Paisification Major Moderate Minor 100% of the rule requirement was not met. **Violation Events Number of Violation Events Number of Violation Events **Violation Events One single event is recommended. **Economic Benefit (EB) for this violation Estimated EB Amount 528 Violation Final Penalty Total 5177 | | • | | of Transportation | | | | |
| Modia [Statute] Public Water Supply Enf. Coordinator Thomas Bernett Violation Number Rule Cite(s) So Tex. Admin. Code § 290.46(f)(2) Failed to provide water system records to Commission personnel at the time of the investigation. Specifically, water system personnel were unaware of the requirements regarding records management and retention for public water supples and failed to provide any records to Commission personnel on the date of the investigation. Base Penalty \$1,800 SEnvironmental, Property and Human Health Matrix Harm OR Release Major Moderate Minor Actual Potential Percent 0% >>Programmatic Matrix Failsfication Major Moderate Minor Actual Potential Adjustment \$890 \$100 Violation Events Number of Violation Events I 39 Number of Violation days Violation Events One single event is recommended. Economic Benefit (EB) for this violation Estimated EB Amount \$200 Violation Final Penalty Total \$177 | | | | | | | PCW Revision | June 26, 2007 |
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| Description | Avoided Costs | ANN | IUALIZE [1] avoid | led costs before e | ntering | item (except for | one-time avoided | costs) |
| Description | Disposal | | | 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 | 0.0 | \$0 | \$0 | \$0 |
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| Approx. Cost of Compliance \$500 TOTAL \$2 | | | | | | | | |
| | | | | | | | | |

Compliance History

| Customer/Respondent/Owner-Operator: | CN600803456 | Texas Department of Transp | ortation | Classification: AVER | AGE Rating: 3.2 |
|--|------------------------------|------------------------------|-----------|--|--|
| Regulated Entity: | RN101209740 | HALE COUNTY COMFORT | STATION | Classification: | Site Rating |
| ID Number(s): | PUBLIC WATER WATER LICENS | SYSTEM/SUPPLY | REGISTRAT | FION CONTRACTOR OF | 0950066 0950066 |
| Location: | | 9, PLAINVIEW, TX, 79072 | | \$ 13 m Co | |
| TCEQ Region: | REGION 02 - LUE | BBOCK | | Fig. 1. sas. | |
| Date Compliance History Prepared: | December 27, 20 | 07 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | Action (1971) | |
| Compliance Period: | August 03, 2002 1 | to August 03, 2007 | | Branch Carlo | |
| TCEQ Staff Member to Contact for Additional Infor | mation Regarding t | his Compliance History | | the first of | |
| Name: Thomas Barnett | Ph | one: <u>713-767-3680</u> | | No destruction of the second o | |
| | Site C | ompliance History Comp | onents | | |
| 1. Has the site been in existence and/or operation | for the full five year | compliance period? | Yes | The second | |
| 2. Has there been a (known) change in ownership | of the site during th | e compliance period? | No | No the Court of | |
| 3. If Yes, who is the current owner? | | • | N/A | | · |
| 4. if Yes, who was/were the prior owner(s)? | | n | N/A | | |
| 5. When did the change(s) in ownership occur? | | And the second second second | N/A | | an a |
| Components (Multimedia) for the Site : | | | | | |
| B. Any criminal convictions of the state of N/A C. Chronic excessive emissions events. N/A D. The approval dates of investigations. (Convertigations) (Con | CCEDS Inv. Track. I | Nó.) | | | |
| | | | | | |
| F. Environmental audits. N/A | | | | | |
| G. Type of environmental management sy | stems (EMSs). | | | ` | |
| N/A | | | | | |
| H. Voluntary on-site compliance assessment | ent dates. | , | | | |
| N/A | | | | | |
| I. Participation in a voluntary pollution red | duction program. | | | | |
| N/A | | | | | |
| J. Early compliance. | | | | | |
| N/A | | | | | |
| Sites Outside of Texas | | • | | | |

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



| IN THE MATTER OF AN | § | BEFORE THE |
|---------------------|----------|-----------------------|
| ENFORCEMENT ACTION | § | |
| CONCERNING | § | |
| TEXAS DEPARTMENT OF | § | TEXAS COMMISSION ON |
| TRANSPORTATION | § | |
| RN101209740 | § | ENVIRONMENTAL QUALITY |

AGREED ORDER DOCKET NO. 2007-1311-PWS-E

I. JURISDICTION AND STIPULATIONS

| At its | agenda, the Texas Commission on Environmental Quality ("the |
|---|--|
| Commission" or "TCEQ") considered the | is agreement of the parties, resolving an enforcement action |
| regarding Texas Department of Transport | ation ("TxDOT") under the authority of TEX HEALTH & SAFETY |
| | of the TCEQ, through the Enforcement Division, and TxDOT |
| appear before the Commission and togeth | er stipulate that: |

- 1. TxDOT operates a motorist rest stop with a public water supply near mile marker 29 on Interstate 27, south of Plainview, Hale County, Texas (the "Facility").
- 2. The Commission and TxDOT agree that the Commission has jurisdiction to enter this Agreed Order, and that TxDOT is subject to the Commission's jurisdiction.
- 3. TxDOT received notice of the violations alleged in Section II ("Allegations") on or about July 12, 2007.
- 4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by TxDOT of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
- 5. An administrative penalty in the amount of One Thousand Four Hundred Fifty Dollars (\$1,450) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). One Thousand One Hundred Sixty Dollars (\$1,160) shall be conditionally offset by TxDOT's completion of a Supplemental Environmental Project ("SEP") and Two Hundred Ninety Dollars (\$290) is deferred contingent upon TxDOT's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If TxDOT fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require TxDOT to pay all or part of the deferred penalty.
- 6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.



- 7. The Executive Director of the TCEQ and TxDOT have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
- 8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that TxDOT has not complied with one or more of the terms or conditions in this Agreed Order.
- 9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
- 10. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As operator of the Facility, TxDOT is alleged to have:

- 1. Failed to maintain a minimum disinfectant residual of 0.2 milligrams per liter ("mg/L") free chlorine throughout the distribution system at all times, in violation of 30 Tex. ADMIN. CODE § 290.46(d)(2) and Tex. Health & Safety Code § 341.0315(c), as documented during a record review conducted on July 7, 2007. Specifically, on February 20, 21, and 23, 2007, the free chlorine residual was measured to be 0.0 mg/L when samples were taken at various locations within the Facility.
- 2. Failed to provide water system records to Commission personnel at the time of the investigation, in violation of 30 Tex. ADMIN. CODE § 290.46(f)(2), as documented during a record review conducted on July 7, 2007.

III. DENIALS

TxDOT generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that TxDOT pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and TxDOT's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Texas Department of Transportation, Docket No. 2007-1311-PWS-E" to:

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Financial Administration Division, Revenues Section Attention: Cashier's Office, MC 214 Texas Commission on Environmental Quality P.O. Box 13088 Austin, Texas 78711-3088

- 2. TxDOT shall implement and complete a SEP in accordance with Tex. WATER CODE § 7.067. As set forth in Section I, Paragraph 5 above, One Thousand One Hundred Sixty Dollars (\$1,160) of the assessed administrative penalty shall be offset with the condition that TxDOT implement the SEP defined in Attachment A, incorporated herein by reference. TxDOT's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
- 3. It is further ordered that TxDOT shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, begin maintaining a minimum disinfection residual of 0.2 mg/L free chlorine throughout the distribution system at all times, as required by 30 Tex. Admin. Code § 290.46;
 - b. Within 30 days after the effective date of this Agreed Order, begin maintaining water system records that can be made available for review by Commission personnel at the time of an investigation, in accordance with 30 Tex. ADMIN. CODE § 290.46; and
 - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a and 3.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

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Texas Department of Transportation DOCKET NO. 2007-1311-PWS-E Page 4

Water Section Manager Lubbock Regional Office Texas Commission on Environmental Quality 5012 50th Street, Suite 100 Lubbock, Texas 79414-3421

- 4. The provisions of this Agreed Order shall apply to and be binding upon TxDOT. TxDOT is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
- 5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by TxDOT shall be made in writing to the Executive Director. Extensions are not effective until TxDOT receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
- 6. This Agreed Order, issued by the Commission, shall not be admissible against TxDOT in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
- 7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
- 8. Under 30 Tex. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to TxDOT, or three days after the date on which the Commission mails notice of the Order to TxDOT, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

 $(a_1, b_2, \cdots, b_n) = (a_n, b_n)$

For the Commission

Name (Printed or typed) Authorized Representative of Texas Department of Transportation

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

| John Side | 2/20/2008 |
|--|--|
| For the Executive Director | Date |
| \circ | |
| | ated below my signature, and I do agree to the terms ledge that the TCEQ, in accepting payment for the |
| timely pay the penalty amount, may result in: A negative impact on compliance history; Greater scrutiny of any permit applications so Referral of this case to the Attorney General penalties, and/or attorney fees, or to a collection. Increased penalties in any future enforcement | al's Office for contempt, injunctive relief, additionation agency; tactions; Office of any future enforcement actions; and aw. |
| St. 8.5 | 11-29-07 |
| Signature | Date |
| | |
| STEVEN E. SIMMONS P.E. | DEPUTY EXECUTIVE DIRECTOR |

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Title

•

Attachment A Docket Number: 2007-1311-PWS-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:

Texas Department of Transportation

Payable Penalty Amount:

One Thousand One Hundred Sixty Dollars (\$1,160)

SEP Amount:

One Thousand One Hundred Sixty Dollars (\$1,160)

Type of SEP:

Pre-approved

Third-Party Recipient:

Texas Association of Resource Conservation and Development

Areas, Inc. ("RC&D")- Wastewater Treatment Assistance

Location of SEP:

Hale County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to provide low income rural homeowners with assistance to enable the repair or replacement of their failing on-site wastewater systems. SEP monies will be used to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from failing treatment systems

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc. 1716 Briarcrest Drive
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division Attention: SEP Coordinator, MC 219 Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality Financial Administration Division, Revenues Attention: Cashier, MC 214 P.O. Box 13088 Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

Texas Department of Transportation Agreed Order – Attachment A

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

